

EXHIBIT A

COMPLAINT

Case No. 20 TRT 00089 1B

DISTRICT COURT CIVIL COVER SHEET

Carson City

County, Nevada

Case No.

JWAT DWT 8
(Assigned by Clerk's Office)*REC'D & FILED**20 JUL 31 PM 1:44***I. Party Information** (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone): <i>ATTORNEY FOR PLAINTIFF CLERK BY: COOPER CLERK</i>
Christopher Watkins, on behalf of himself and all other similarly situated,	Rapid Financial Solutions, Inc., Cache Valley Bank, Axiom Bank N.A. and Does 1 through 10, inclusive
Attorney (name/address/phone):	Attorney (name/address/phone):
Mark R. Thierman, Joshua D. Buck, Leah L. Jones, Joshua R. Hendrickson 7287 Lakeside Dr. Reno, NV 89511	

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

Real Property	Torts	
Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence	Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input checked="" type="checkbox"/> Other Tort
Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Foreclosure Mediation Assistance <input type="checkbox"/> Other Title to Property	Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	
Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property		
Probate	Construction Defect & Contract	Judicial Review/Appeal
Probate (select case type and estate value)	Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect	Judicial Review <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency
<input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Surviving Spouse <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate	Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency
Estate Value <input type="checkbox"/> Greater than \$300,000 <input type="checkbox"/> \$200,000-\$300,000 <input type="checkbox"/> \$100,001-\$199,999 <input type="checkbox"/> \$25,001-\$100,000 <input type="checkbox"/> \$20,001-\$25,000 <input type="checkbox"/> \$2,501-20,000 <input type="checkbox"/> \$2,500 or less		Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ		Other Civil Filing
Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant	<input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ	Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

07/31/2020

Date

Signature of initiating party or representative

See other side for family-related case filings

1 Mark R. Thierman, Nev. Bar No. 8285
2 mark@thiermanbuck.com
3 Joshua D. Buck, Nev. Bar No. 12187
4 josh@thiermanbuck.com
5 Leah L. Jones, Nev. Bar No. 13161
6 leah@thiermanbuck.com
7 Joshua R. Hendrickson, Nev. Bar No. 12225
8 joshh@thiermanbuck.com
9 **THIERMAN BUCK, LLP**
10 7287 Lakeside Drive
11 Reno, Nevada 89511
12 Tel. (775) 284-1500 Fax. (775) 703-5027

13 Christian Gabroy (#8805)
14 Kaine Messer (#14240)
15 **GABROY LAW OFFICES**
16 The District at Green Valley Ranch
17 170 South Green Valley Parkway, Suite 280
18 Henderson, Nevada 89012
19 Tel (702) 259-7777
20 Fax (702) 259-7704
21 christian@gabroy.com
22 kmesser@gabroy.com

23 *Attorneys for Plaintiff and the Putative Classes*

24 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

25 **IN AND FOR CARSON CITY**

26 CHRISTOPHER WATKINS, on behalf of
27 himself and all others similarly situated,

28 Plaintiff,

29 v.

30 RAPID FINANCIAL SOLUTIONS, INC.
31 d/b/a ACCESS FREEDOM CARDS;
32 CACHE VALLEY BANK; AXIOM BANK
33 N.A.; and DOES 1 through 10, inclusive,

34 Defendants.

35 Lance J. Hendron, Esq.
HENDRON LAW GROUP, LLC
36 625 S. Eighth Street
37 Las Vegas, Nevada 89101
38 Office: (702) 758-5858
39 Fax: (702) 387-0034
40 Email: lance@hlg.vegas

41 Case No.: *3:20-cv-00509-B*
42 Dept. No.: *A*

43 **CLASS ACTION COMPLAINT FOR
44 VIOLATION OF:**

45 **(EXEMPT FROM ARBITRATION
46 PURSUANT TO NAR 5)**

- 47 1. Electronic Fund Transfers Act (15 U.S.C.
48 § 1693)
- 49 2. Nevada Deceptive Trade Practices Act
50 (NRS § 598.092(8 and 14) and NRS
51 598.0923(3);
- 52 3. Conversion;
- 53 4. Unjust Enrichment; and
- 54 5. Unconstitutional Taking

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58 2020 JUL 31 PM 1:44
59 AUDREY COOPER
60 CLERK
61 BY DEPUTY

1 COMES NOW Plaintiff Christopher Watkins, on behalf of himself and all others
2 similarly situated brings this Class Action Complaint against Defendants RAPID FINANCIAL
3 SOLUTIONS d/b/a/ ACCESS FREEDOM CARDS, CACHE VALLEY BANK, and AXIOM
4 BANK N.A., as follows:

INTRODUCTION

6 1. This is a class action by a former prison inmate on behalf of himself and all those
7 similarly situated who, upon release from custody, was required to accept the return of his own
8 money in the form of a credit balance on a release debit card issued by Defendants, which was
9 not the functional equivalent of cash or a check because the value of the cards quickly and
10 permanently deteriorated. Just like the inmates who successfully sued the issuer of a similar
11 release debit card in the recent decision of the Ninth Circuit Court of Appeals in the case of
12 *Brown v. Stored Value Cards, Inc.*, No. 18-35735 (9th Cir. Mar. 16, 2020), Plaintiff alleges that
13 this conduct is a violation of the federal Electronic Fund Transfers Act (15 U.S.C. § 1693(b)
14 hereinafter also “EFTA”), Nevada Deceptive Trade Practices Act (NRS § 598.092(8) and (14),
15 and NRS 598.0923(3), as well as violation of state common law counts for conversion and unjust
16 enrichment.

17 2. Because there was no voluntary consent, there was no agreement based upon the
18 free will of the parties, and any alternative dispute resolution provision in any purported
19 agreement with Defendants is contrary to social policy, unconscionable and therefore void and
20 unenforceable. To the extent that any Defendants claim to be a state actors, then they have
21 violated the Takings Clauses of the Fifth and Fourteenth Amendment to the United States
22 Constitution and Section 8(2) of Article 1 of the Nevada Constitution.

JURISDICTION

24 3. This Court has original jurisdiction over all Nevada state law claims herein, as
25 this is a class action with claims in excess of 15,000 in the aggregate, and a request for injunctive
26 relief.

27 4. This Court has concurrent and/or derivative jurisdiction over claims of violation
28 of federal Electronic Funds Transfer Act (15 U.S.C. § 1693 *et seq.*, hereinafter the "EFTA")

1 because they arise from the same transactions or occurrences, or the same set or nucleus of
 2 operative facts, as the state law claims alleged herein. The EFTA provides that suit to remedy
 3 claims of a violation of the may be brought in this Court, stating at 15 U.S.C. § 1693m(g):
 4 “Without regard to the amount in controversy, any action under this section may be brought in
 5 any United States district court, *or in any other court of competent jurisdiction*, within one year
 6 from the date of the occurrence of the violation.” (Emphasis supplied).

7 5. To the extent that Defendants may affirmatively claim that they were state actors,
 8 then this court has jurisdiction pursuant to 42 U.S.C. § 1983 for claims of violation of the Fifth
 9 and Fourteenth Amendment's Takings Clause, as well and Section 8(2) of Article 1 of the Nevada
 10 Constitution. Pursuant to NRS 41.031 *et seq.* there is no sovereign immunity for state actors
 11 from the non-constitutional claims as well.

12 6. Venue is proper in this District because each Defendant is subject to personal
 13 jurisdiction in this District and Plaintiffs charged him fees for using and/or maintaining his
 14 “Access Freedom” release debit card within this District, and thus a substantial part of the events
 15 or omissions giving rise to the claim occurred within this District.

PARTIES

17 7. At all times relevant herein, Plaintiff CHRISTOPHER WATKINS is and was a
 18 natural born person who was in the custody of the State of Nevada Department of Corrections
 19 (“NDOC”) as an inmate at Stewart Conservation Camp for almost two years until his release on
 20 April 13, 2020, at which time, he returned to the state of Pennsylvania with a debit card.

21 8. At all times relevant herein, Defendant RAPID FINANCIAL SOLUTIONS, INC.
 22 d/b/a ACCESS FREEDOM CARDS is and was a corporation with its principle place of business
 23 in North Logan, Utah, engaged in the business of issuing debit cards to governmental state and
 24 local governmental entities for use by correctional facilities as payment for sums owed to prison
 25 inmates during incarceration and upon release.

26 9. At all times relevant herein, Defendant CACHE VALLEY BANK is and was a
 27 privately held business entity doing business as an FDIC regulated bank with its principle place
 28 of business located at 101 North Main, Logan, UT 84321. Upon information and belief,

1 Defendant CACHE VALLEY BANK maintains the master card banking network access
2 connection, holds the pooled account and holds each class member funds as directed by
3 Defendant RAPID FINANCIAL SOLUTIONS, INC.

4 10. At all times relevant herein, Defendant AXIOM BANK N.A. is and was a
5 nationally chartered community bank headquartered in Central Florida, that provides retail
6 banking services, including checking, deposit, and money market accounts, through 19 branch
7 locations, 17 of which are located inside select Walmart Supercenters. Upon information and
8 belief, Defendant AXIOM BANK N.A. also maintains the master card banking network access
9 connection, maintains the pooled account and holds class member funds as directed by Defendant
10 RAPID FINANCIAL SOLUTIONS, INC.

FACTS

12 11. Over 650,000 prisoners are released from state and federal prisons annually.
13 During the term of their incarceration, many earn wages from working at prison labor camps. In
14 addition, some inmates have money credited to their trust accounts, referred to as putting money
15 on their "Book" for purpose of buying goods for their use at the prison commissary. Finally,
16 some inmates have had money taken from them at the time of incarceration and this money is
17 held in trust by the prison for the inmate until release. All these sums are the property of the
18 prisoner and must be returned to the prisoner at the time of the release.

19 12. Traditionally, when individuals were released from prisons, and other detention
20 facilities, their jailers returned to them any wages earned but unspent during their term in prison,
21 any monies that had accrued in the individual prisoner's trust account (remaining on the books
22 of the commissary), or money taken at the time of incarceration in the form of cash or a check
23 payable upon demand without discount or fee at any bank and/or state charted savings and loan
24 or other financial institution.

25 13. In many jurisdictions, however, instead of receiving their account balances in cash
26 or check upon release, prisoners are automatically given their account balances in the form of a
27 credit which can only be accessed by use of a prepaid debit cards, sometimes called a prison

1 release card. According to article by NBC News entitled “Inmates Charged Fee After Leaving
2 Jail.”¹

3 With about 650,000 prisoners released from state and federal prisons
4 and an estimated 12-million people processed through local jails
5 nationwide each year, there’s a built-in market for these cards. But
there’s also a cost, one that’s usually passed along to the inmates.

6 “These companies have a literally captive market where prisoners
7 frequently complain of being overcharged, but do not have proper
8 regulatory tools to protect themselves,” said Paul Wright at the
Human Rights Defense Center. “It would be one thing if people
9 were given the option of cash, a check or a debit card with fees, but
10 there is no consumer choice. I find the whole process offensive and
unfair.

11 14. Defendant RAPID FINANCIAL SOLUTIONS contracts with governmental
12 correctional and detention facilities like the State of Nevada Department of Corrections to
13 provide prepaid card programs for use by the operators of correctional facilities to pay inmates
14 who have earned wages during their term in prison, who have had money deposited in a trust
15 account on their behalf for use at a commissary (money on the inmate’s “book”), or who have
16 had cash taken from them at the time of incarceration the money that belongs to the inmate that
17 must be paid to the inmate upon release from custody.

18 15. Defendant RAPID FINANCIAL SOLUTIONS offers governmental correctional
19 facilities like the State of Nevada, Department of Corrections a method of paying these inmates
20 their money without the expense of handling cash or writing individual checks to the inmate upon
21 his or her release.

22 16. Defendant RAPID FINANCIAL SOLUTIONS give the correctional facility
23 operators blank plastic debit cards with no value initially, which then is issued to the inmate with
24 a credit balance equal to the amount owed to that inmate upon release.
25

26
27 1 Available at <https://www.nbcnews.com/business/consumer/inmates-charged-fee-after-leaving-jail-n329151> (last visited July 22, 2020).
28

1 17. Defendant RAPID FINANCIAL SOLUTIONS in turn contracts with Defendants
2 CACHE VALLEY BANK and/or AXIOM BANK N.A. as an issuing bank for its cards, and
3 MasterCard as the payment network sponsor.

4 18. If, at the time of release from incarceration, the correctional institution has money
5 due the inmate that must be returned to the inmate upon release, the inmate is given an release
6 debit card, which Defendants label the “ACCESS FREEDOM CARD,” which is a prepaid debit
7 card loaded with a balance equal to the money that is owed the inmate. At the time of release,
8 the card is activated and ready for immediate use.

9 19. Defendant RAPID FINANCIAL SOLUTIONS, INC, describes this portion of its
10 business on its web pages at <https://rpdfin.com/government/> (last visited July 21, 2020) as
11 follows:

CORRECTION PAYOUTS MADE EASY AND EFFICIENT

With ReleasePay jails can reduce time, cost and workload by turning the manual, time-consuming task of writing checks into an easy automated process, freeing you up to focus on running your correctional facility. Processing jail payments is now easy, secure and streamlined.

16 ReleasePay helps jail administrators gain greater efficiency across their
17 correctional facility by providing them with a digital money management solution.
18 All inmate data entered at the local level is automatically updated into a secure
19 centralized database, so the commissary records are accurate at all times. Extensive
audit records help state auditors maintain control.

20. Defendants earn revenue from the fees that it charges cardholders. As a result,
21 Plaintiff just like every inmate who is released from custody with an "ACCESS FREEDOM
22 CARD," instead of cash or a check in the amount of money owed, is required to pay fees to
Defendants in order to access his or her own money.

24 21. While in prison, plaintiff was voluntarily employed by the State of Nevada
25 fighting fires for which he was paid 10 cents of every hour worked. One of the purposes of this
job was to earn "walking money" to be paid when he was released from custody.

26 22. At the time of his release in April 2020, Plaintiff had earned and was credited with
27 approximately \$400.00.
28

1 23. Rather than provide Plaintiff with his money in cash or in the form of a check
2 payable without discount at any bank, Plaintiff had no choice but to accept in lieu of cash, an
3 "ACCESS FREEDOM CARD" provided by Defendant RAPID FINANCIAL SOLUTIONS, Inc.

4 24. Immediately upon release, Plaintiff attempted to withdraw cash money to pay for
5 transportation from the correctional facility using the card for the first time at a convenience store
6 down the street from the prison facility. For reasons unknown, the card was declined, and
7 Plaintiff was charged a fee. Plaintiff was unable to use the card for some time after his release,
8 and had no cash or a check he could cash to pay for transportation or other costs of the journey
9 home.

10 25. As stated in the fee schedule attached hereto as Exhibit 1, Defendants charge
11 cardholders a \$1.50 weekly maintenance fee, first charged only three days after card activation.
12 There is also a \$2.75 fee for every ATM withdrawal in addition to any fee charged by the ATM
13 itself. Other fees include a \$1.50 fee for each ATM balance inquiry made by the cardholder, and
14 a \$2.75 fee for each attempted transaction that was declined at any location (plus whatever fee
15 the ATM itself may charge) and a \$2.95 per card for lost or stolen card replacement. Generally,
16 these fees exceed the fees charged by the card issuer in the case of *Brown v. Stored Value Cards,*
17 *Inc.*, No. 18-35735 (9th Cir. Mar. 16, 2020).

18 26. Defendants can charge and collect these exorbitant fees because their exclusive
19 contracts with state and local agencies shield them from competitive market forces.

20 27. Individuals who are released from any NDOC facility have no choice but to accept
21 a "ACCESS FREEDOM CARD" provided by Defendant RAPID FINANCIAL SOLUTIONS.
22 Inc. in lieu of receiving the return of their own money in the form of cash or check.

23 28. The inmates do not voluntarily engage the company, enroll in the program, or take
24 any affirmative steps to form any contractual relationship with Defendants herein or MasterCard.

25 29. Plaintiff was a captive consumer for Defendants and Defendants took full
26 advantage of Plaintiff's complete lack of bargaining power by requiring Plaintiff to pay various
27 exorbitant and/or unreasonable fees to retrieve his own money.

28

1 30. Of course, Plaintiff would never have agreed to receive his money in the form of
2 the extremely expensive "ACCESS FREEDOM CARD" provided by Defendant RAPID
3 FINANCIAL SOLUTIONS, Inc. if he had been given any choice or bargaining power. Plaintiff
4 never voluntarily consented to any term of any agreement with Defendants nor was there any
5 valid consideration for any such agreement.

6 31. But, like the thousands of other former inmates that Defendants charge to spend
7 their own money, Plaintiff had no choice to accept the release debit card and its onerous fees in
8 order to obtain his own money upon release.

9 32. Plaintiff and the putative Class represent an involuntary market where consumers
10 have no choice or say in whether they have to use prepaid debit cards to access their own money
11 or not.

12 33. Plaintiff and members of Plaintiff class did not agree to any of the terms imposed
13 by Defendants in any contract or writing, including any arbitration provision, since there was no
14 freely given consent, and the consideration was the inmates own money which is inadequate as
15 a matter of law. Any boilerplate contract with Defendants in this case made while the Plaintiff
16 was still in prison is voidable, and hereby voided, on the grounds of duress because a Plaintiff
17 and any class member making the claims here was forced to agree to such agreement by means
18 of a wrongful threat of withholding the inmates own money, while still in the custody of the
19 correctional facility, thereby precluding the exercise of free will necessary to establish consent.

34. In addition, the terms of any such agreement are communicated to the inmate
either simultaneously with the issuance of the card, or afterwards.

22 35. The arbitration provisions of the agreement between Defendants herein and
23 inmates was found not to be binding in the case of *Reichert v. Keefe Commissary Network, L.L.C.*,
24 No. C17-5848RBL (W.D. Wash. Oct. 30, 2019).

CLASS ACTION ALLEGATIONS

26 36. Plaintiffs reallege and incorporate by this reference all the paragraphs above in
27 this Complaint as though fully set forth herein.

1 37. Plaintiff brings this action on behalf of themselves and all other similarly situated
2 pursuant to Fed. R. Civ. P. 23(a), 23(b)(2) and 23(b)(3) on behalf of the following classes: The
3 Nationwide Card Class and the Nevada Card Class.

4 38. The **Nationwide Card Class** is defined as:

5 All persons who, upon release from a jail, prison, or detention
6 facility, were provided with a prepaid card issued by Defendant
7 RAPID FINANCIAL SOLUTIONS or its affiliates, and/or CACHE
8 VALLEY BANK of Utah, or its affiliates, and/or Defendant
9 AXIOM BANK N.A. of Florida, or its affiliates, in lieu of cash or a
10 check for the balance of funds belonging to the inmate at time of
11 release from custody and who were required to pay any fee in
12 conjunction with the use or maintenance of the card except those
13 persons who were released from prison in the State of Washington
14 and who are members of the class certified in the case of *Reichert v.
Keefe Commissary Network, L.L.C.*, No. 3:17-cv-05848-RBL (W.D.
15 Wash. May 8, 2019).

16 39. The **Nevada Card Class** is defined as

17 All persons who, upon release from a jail, prison, or detention
18 facility, within the state of Nevada, and who were provided with a
19 prepaid card issued by Defendant RAPID FINANCIAL
20 SOLUTIONS or its affiliates, and/or Defendant CACHE VALLEY
21 BANK of Utah, or its affiliates, and/or Defendant AXIOM BANK
22 N.A. of Florida, or its affiliates, in lieu of cash or a check for the
23 balance of funds belonging to the inmate at time of release from
24 custody and who were required to pay any fee in conjunction with
25 the use or maintenance of the card.

26 40. Plaintiff's situation is similar to all those they seek to represent because
27 Defendants took money from Plaintiff and all other released inmates and provided instead a debit
28 card that was not the functional equivalent of cash or a check because the value of the card
quickly and permanently deteriorated do to fees and charges associated with its use and
maintenance.

29 41. Common questions of fact and/or law exist whether the involuntary taking of
30 money in exchange for a debit card that was not the functional equivalent of cash or a check, but
31 worth less than the money taken from the inmate, 1) constitutes a violation Section 1693l-1 of
32 the Electronic Funds Transfer Act, which prohibits charging service fees to "general-use prepaid

1 cards,” 2) constitutes a violation of EFTA section § 1693i, which prohibits the issuance, absent
2 certain disclosures, of unsolicited validated cards that provide access to a “consumer’s account,”
3 3) violates NRS § 598.092 subsections 8 and 14 and NRS 598.0923(3) for all prisoners released
4 from NDOC facilities, 4) constitutes conversion under state common law, and 5) constitutes
5 unjust enrichment under state common law.

6 42. To the extent that Defendants plead an affirmative defense of state action, then
7 there is a common question of law and fact of whether they were state actors, and if so, did their
8 actions complained of herein constitute a governmental taking in violation of the Fifth and
9 Fourteenth Amendment of the Constitution.

10 43. Upon information and belief, each class is sufficiently numerous because there is
11 more than 1,000 Nevada Card Class members and more than 10,000 Nationwide Class Members
12 within the applicable statute of limitations.

13 44. Plaintiffs’ claims are typical to those of fellow class members because each class
14 member is and was subject to the same practices, plans, or policies as Plaintiff.

15 45. Plaintiff is an adequate representative of the class because 1) Plaintiff will fairly
16 and adequately represent the interests of the Class; 2) Plaintiff is a member of the Class, Plaintiff
17 has issues of law and fact in common with all members of the Class; and 3) Plaintiff does not
18 have interests that are antagonistic to Class members. Plaintiff has retained counsel experienced
19 in large class action and civil rights litigation who are financially able to bear the costs of this
20 litigation.

21 46. A class action is superior to other available means for the fair and efficient
22 adjudication of this controversy, since individual joinder of all members of the Class is
23 impractical, and common claims of whether Plaintiffs and Class Members are entitled to
24 compensation for the work activities performed predominate over individual issues. Class action
25 treatment will permit a large number of similarly situated persons to prosecute their common
26 claims in a single forum simultaneously, efficiently, and without unnecessary duplication of
27 effort and expense. Furthermore, the expenses and burden of individualized litigation would
28 make it difficult or impossible for individual members of the Class to redress the wrongs done to

1 them, while an important public interest will be served by addressing the matter as a class action.
 2 Individualized litigation would also present the potential for inconsistent or contradictory
 3 judgments.

FIRST CAUSE OF ACTION

4 Violation of the Electronic Funds Transfer Act, 15 U.S.C. § 1693 et seq.
 5 (On Behalf of Plaintiff and the Nationwide Card Class Against Defendants)

6 47. Plaintiff re-alleges and incorporates by reference all of the allegations of this
 7 Complaint as stated above with the same force and affect as if fully restated herein.

8 48. The primary objective of the EFTA is to protect consumer rights by providing a
 9 basic framework establishing the rights, liabilities, and responsibilities of participants in the
 10 electronic fund and remittance transfer systems.

11 49. Among its consumer protection provisions, the EFTA prohibits the unsolicited
 12 issuance to a consumer of an electronic fund transfer card that does not meet all of the EFTA's
 13 unsolicited access device criteria. *See* 15 U.S.C. § 1693(i).

14 50. ETFA Section 1693i prohibits the issuance, absent certain disclosures, of
 15 unsolicited validated cards that provide access to a "consumer's account." ETFA § 1693i(c) says
 16 that a card is "validated when it may be used to initiate an electronic fund transfer."

17 51. ETFA Section 1693l-1 prohibits charging service fees to "general-use prepaid
 18 cards" unless the card has not been used for 12 months and other requirements have been met.
 19 ETFA § 1693l-1(b).

20 52. A general-use prepaid card is (1) "redeemable at multiple, unaffiliated merchants
 21 or services providers, or automated teller machines"; (2) "issued in a requested amount"; (3)
 22 "purchased or loaded on a prepaid basis"; and (4) "honored . . . by merchants for goods or
 23 services, or at automated teller machines." ETFA § 1693l-1(a)(2)(A). A general-use prepaid card
 24 does not include a card that "is not marketed to the general public." Id. § 1693l-1(a)(2)(D)(iv).

25 53. The "FREEDOM ACCESS" card issued by Defendants RAPID FINANCIAL
 26 SOLUTIONS, CACHE VALLEY BANK and/or AXIOM BANK N.A. are issued to inmates, a
 27 very large sub-set of the general population, when inmates are released from jail or prison, and
 28 rejoin the general public.

54. Defendants RAPID FINANCIAL SOLUTIONS, CACHE VALLEY BANK and/or AXIOM BANK N.A. indirectly market the cards to released inmates.

55. Defendants RAPID FINANCIAL SOLUTIONS, CACHE VALLEY BANK and/or AXIOM BANK N.A. are financial institutions as defined by 15 U.S.C. § 1693a (9) because they directly hold accounts belonging to consumers.

56. Defendants RAPID FINANCIAL SOLUTIONS and/or Defendant CACHE VALLEY BANK and/or Defendant AXIOM BANK N.A. violated 15 U.S.C. § 1693(i) by issuing to consumers unsolicited electronic transfer cards that do not meet all of the EFTA's unsolicited access device criteria.

10 57. By the violations of the EFTA and conduct alleged above, Defendants RAPID
11 FINANCIAL SOLUTIONS and/or Defendant CACHE VALLEY BANK and/or Defendant
12 AXIOM BANK N.A. have caused and continue to cause Plaintiff and the Class damages.

13 58. Wherefore, Plaintiffs demand of Defendants, and each of them, return of all fees
14 charged to Plaintiff and members of the Nationwide Card Class for use of the ACCESS
15 FREEDOM debit Card, plus the maximum amount of statutory damages pursuant to 15 U.S.C.
16 § 1693m-(a)(2)(b) and (a)(3), together with interest attorneys fees and costs, according to law.

SECOND CAUSE OF ACTION

**Violation of NRS § 598.092 subsections 8 and 14 and NRS 598.0923(3)
(On Behalf of Plaintiff and the Nevada Card Class Against Defendants)**

19 59. Plaintiff re-alleges and incorporates by reference all the allegations of this
20 Complaint above with the same force and affect as if fully restated herein.

60. The Nevada Deceptive Trade Practices Act (hereinafter also "NVDTPA") NRS
§ 598.092 subsections 8 and 14 provides that "A person engages in a "deceptive trade practice"
when in the course of his or her business or occupation he or she: . . .

24 a. Knowingly misrepresents the legal rights, obligations, or remedies of a party to a
25 transaction. (section 8) or
26 b. Knowingly takes advantage of another person's inability reasonably to protect his
27 or her own rights or interests in a consumer transaction when such an inability is
28 due to illiteracy, or to a mental or physical infirmity or another similar condition

which manifests itself as an incapability to understand the language or terms of any agreement. (section 14)

3 61. Under NRS 598.0923(3), “[a] person engages in a ‘deceptive trade practice’ when
4 in the course of his or her business or occupation he or she knowingly...[v]iolates a state or federal
5 statute or regulation relating to the sale or lease of goods or services.” NRS § 598.0923(3).

6 62. By the conduct described above, Defendants and each of them has violated the
7 provisions of Sections 8 and 14 of NRS § 598.092 and NRS § 598.0923(3).

8 63. Under the NVDTPA, “[a]n action may be brought by any person who is a victim
9 of consumer fraud.” Nev. Rev. Stat. § 41.600(1). A claim under the NVDTPA “requires a ‘victim’
10 of consumer fraud to prove that (1) an act of consumer fraud by the defendant (2) caused (3)
11 damage to the plaintiff.”

12 64. Plaintiff and the members of the Nevada Class are each victims of consumer fraud
13 who have suffered an ascertainable loss as a result of Defendants' unlawful trade practices and/or
14 unconscionable tactics.

15 65. Defendants' unlawful trade practices and/or unconscionable tactics were willful.

16 66. Defendants' unlawful trade practices have caused and continue to cause Plaintiff
17 and the Nevada Class actual damages.

18 67. Wherefore, Plaintiffs demand of Defendants, and each of them, return of all
19 fees charged to Plaintiff and members of the Nevada Card Class for use of the ACCESS
20 FREEDOM debit Card, plus triple damages pursuant to NRS 42.005, interest, attorneys fees and
21 costs as allowed by law.

THIRD CAUSE OF ACTION

Conversion

(On Behalf of Plaintiff and the Nevada Card Class Against Defendants)

68. Plaintiff re-alleges and incorporates by reference all of the allegations of this Complaint with the same force and affect as if fully restated herein.

69. Defendants, and each of them, have performed each of the elements of a claim for a common count claim of conversion, which in Nevada, are:

- 1 a. A distinct and intentional act of dominion by one which is wrongfully exerted
2 over the property of another;
- 3 b. Act committed in denial of, or inconsistent with the rightful owner's use and
4 enjoyment of the property;
- 5 c. Act committed in derogation, exclusion, or defiance of the owner's rights or titled
6 in the property; and
- 7 d. Causation and damages.

8 70. Defendants have wrongfully collected fees from Plaintiff and members of the
9 Class and have taken specific and readily identifiable funds from Plaintiff and the members of
10 the Class in payment of these fees in order to satisfy these fees charged unlawfully. Defendants,
11 without proper authorization, assumed and exercised the right of ownership over these funds, in
12 hostility to the rights of Plaintiff and the Class, without legal justification, and with full
13 knowledge that the conduct complained of herein was unlawful. See, e.g. *Reichert v. Keefe*
14 *Commissary Network, L.L.C.*, No. C17-5848RBL (W.D. Wash. Oct. 30, 2019); *Brown v. Stored*
15 *Value Cards, Inc.*, No. 18-35735 (9th Cir. Mar. 16, 2020).

16 71. Defendants continue to retain these funds unlawfully and without the consent of
17 Plaintiff or the Class.

18 72. Defendants intend to permanently deprive Plaintiff and the Class of these funds.

19 73. These funds are properly owned by Plaintiff and the Class, not Defendants herein,
20 who now claim that they are entitled to their ownership, contrary to the rights of Plaintiff and the
21 Class.

22 74. Plaintiff and the members of the Class are entitled to the immediate possession of
23 these funds.

24 75. Defendants have wrongfully converted these specific and readily identifiable
25 funds.

26 76. Defendants' wrongful conduct is continuing.

27 77. NRS § 598.0953 states that: "The deceptive trade practices listed in NRS
28 598.0915 to 598.0925, inclusive, are in addition to and do not limit the types of unfair trade

practices actionable at common law or defined as such in other statutes of this State.” Conversion
is an action at common law.

3 78. As a direct and proximate result of Defendants' wrongful conversion, Plaintiff
4 and the Class have suffered and continue to suffer damages.

5 79. Wherefore, Plaintiffs demand of Defendants, and each of them, return of all fees
6 charged to Plaintiff and members of the Nevada Card Class for use of the ACCESS FREEDOM
7 debit Card, plus triple damages pursuant to NRS 42.005, interest, attorneys fees and costs as
8 allowed by law.

FOURTH CAUSE OF ACTION

Unjust Enrichment

(On Behalf of Plaintiff and the Nevada Card Class Against Defendants)

11 80. Plaintiff re-alleges and incorporates by reference all of the allegations of this
12 Complaint above with the same force and affect as if fully restated herein.

13 81. Defendants have been unjustly enriched by their assessment of fees upon Plaintiff
14 and the Nevada Card Class that are unfair, unconscionable, inflated, and oppressive.

15 82. The circumstances are such that it would be unjust and inequitable for Defendants
16 to retain the benefit that they unjustly received from Plaintiff and the Nevada Card Class.

17 NRS § 598.0953 states: "The deceptive trade practices listed in NRS 598.0915 to
18 598.0925, inclusive, are in addition to and do not limit the types of unfair trade practices
19 actionable at common law or defined as such in other statutes of this State."

84. Unjust enrichment is actionable at common law.

21 85. Plaintiff and the Nevada Card Class have suffered and continue to suffer actual
22 damages as a result of Defendants' unjust retention of proceeds from their acts and practices
23 alleged herein

24 86. Wherefore, Plaintiffs demand of Defendants, and each of them, return of all fees
25 charged to Plaintiff and members of the Nevada Card Class for use of the ACCESS FREEDOM
26 debit Card, plus triple damages pursuant to NRS 42.005, interest, attorneys fees and costs as
27 allowed by law.

FIFTH CAUSE OF ACTION

Unconstitutional Taking

(On Behalf of Plaintiff and the Nevada Card Class Against Defendants)

87. Plaintiff re-alleges and incorporates by reference all of the allegations of this Complaint as stated above with the same force and affect as if fully restated herein.

88. Defendants are not acting like an agency of the government in performing the acts described in this complaint.

89. Notwithstanding, if the Defendants claim to be state actors, then Defendants are subject to the provision of the Constitution of the State of Nevada for all acts occurring in Nevada, and the United States Constitution.

90. Section 8, subsections 2 and 3 of Article 1 of the constitution of the state of Nevada states:

2. No person shall be deprived of life, liberty, or property, without due process of law.

3. Private property shall not be taken for public use without just compensation having been first made, or secured, except in cases of war, riot, fire, or great public peril, in which case compensation shall be afterward made.

91. A state actor may not deprive any person of property without just compensation and without due process pursuant to the Fifth and Fourteenth Amendment to the United States Constitution and Section 8, subsections 2 and 3 of Article 1 of the constitution of the state of Nevada.

92. To the extent Defendants may be considered state actors, then they have caused and continue to cause Plaintiff and member of the Nevada Class actual damages by violation of the Fifth and Fourteenth Amendment to the United States Constitution and Section 8, subsections 2 and 3 of Article 1 of the constitution of the state of Nevada.

93. Wherefore, Plaintiff demands of Defendants, and each of them, return of all fees charged to Plaintiff and members of the Nevada Card Class for use of the ACCESS FREEDOM debit Card, together with interest, attorneys fees and costs as allowed by law.

PRAYER

WHEREFORE, Plaintiff, on behalf of herself and on behalf of the Nationwide Card Class and the Nevada Card Class, prays for the following relief:

1. An order certifying this case as a class action and appointing Plaintiff and the undersigned counsel to represent the Classes;
2. Declaration, judgment, and decree that Defendants RAPID FINANCIAL SOLUTIONS, INC., CACHE VALLEY BANK and/or AXIOM BANK N.A. conduct as alleged herein:
 - a. Violates the EFTA;
 - b. Constitutes conversion; and
 - c. Constitutes unjust enrichment;
3. Declaration, judgment, and decree that Defendants RAPID FINANCIAL SOLUTIONS, INC., CACHE VALLEY BANK and/or AXIOM BANK N.A. conduct alleged herein violates the NVDTPA;
4. Damages to Plaintiff and the Classes to the maximum extent allowed under state and federal law;
5. Restitution and/or disgorgement of ill-gotten gains;
6. An injunction against future violations of the EFTA;
7. An injunction requiring corrective measures to be taken to prevent Defendants from engaging in the above-described misconduct;
8. Pre- and post-judgment interest;
9. Reasonable attorneys' fees;

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10. Costs and disbursements of the action; and
11. Such other relief, in law and equity, as this Court may deem just and proper.

DATED this 30th day of July 2020

Respectfully Submitted,

~~THIERMAN~~ BUCK LAW FIRM

✓

Mark R. Thierman

Joshua D. Buc

Leah L. Jones

GABROY LAW OFFICE
Christian Gabroy
Kaine Messer

HENDRON LAW GROUP, LLC
Lance J. Hendron

Attorneys for the Plaintiff

EXHIBIT 1

EXHIBIT 1

Manage Your Money Your Way

\$1.50* **\$0** **\$2.75** **N/A**

ATM Balance Inquiry \$1.00

Customer Service 50¢

ATM Withdrawals 5¢

Card Replacement \$2.75

Card Reissuance \$0.99

Debit Card ATM Withdrawals \$0.99

No overdraft/credit feature.

Your funds will be held or transferred to Action Bank, via FPLIC secured institution.

For standard transaction deposit products accounts, no fee charges incurred.

Other products and services for debit card services, as the Cardholder Agreements on the reverse side of this credit statement.

Transactions at gas stations \$0.99

Transactions at restaurants \$0.99

Transactions at convenience stores \$0.99

Transactions at gas stations \$0.99

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Transactions at restaurants \$0.99

Transactions at convenience stores \$0.99

Transactions at gas stations \$0.99

Transactions at restaurants \$0.99

Check your balance or change PIN at a gas station.
Identification required. Three different ways:

Register online at

[MasterCard Freedom/Currency](#)

-OR-

Download the currency mobile app
-or-

Call 877-287-2448

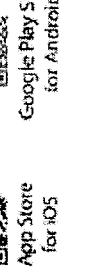
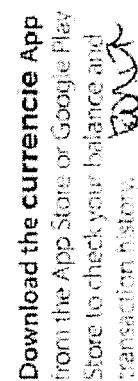
Funds are available immediately since the
transaction has been loaded.

Use your card anywhere MasterCard is
accepted to make purchases.

Or register for more options to use your
money such as ATM, mobile, PayNearMe,
carDS, or a paper check.

Use your card to use your
store to check your balance and
transaction history.

Download the currency App
from the App Store or Google Play
Store to check your balance and
transaction history.



GET STARTED

with these options to receive your money.

GET STARTED

with these options to receive your money.

Use Your Card

for immediate access to your money.

- Use your card anywhere MasterCard is
accepted!

- Get cash back anywhere MasterCard is accepted.

- Download the currency app to check
your balance and transaction history or
register for the options below.

-OR-

for additional ways to use your money.

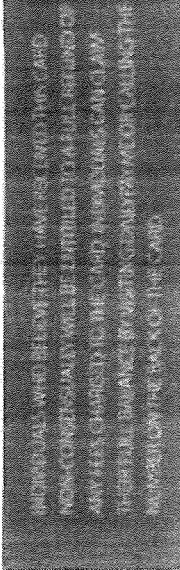
Register online at the website or the back of your
card or through the mobile app. Use of these services
isn't free or no cost.

- Move money to a bank account.

- Send money to PayPal.

- Buy gift cards.

- Request a paper check.



-100+ fees

Register online at

[MasterCard Freedom/Currency](#)

-OR-

Download the currency mobile app
-or-

Call 877-287-2448

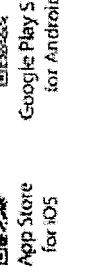
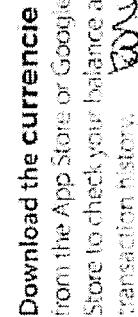
Funds are available immediately since the
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Use your card anywhere MasterCard is
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Or register for more options to use your
money such as ATM, mobile, PayNearMe,
carDS, or a paper check.

Use your card to use your
store to check your balance and
transaction history.

Download the currency App
from the App Store or Google Play
Store to check your balance and
transaction history.



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12.22
877-287-2448

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CARDHOLDER AGREEMENT

(Effective June 2019)

This Cardholder Agreement ("Agreement") sets forth the terms of your prepaid Card. Please read it carefully and retain it for your records. If you do not agree to these terms, do not use the Card or if you would like to cancel call Customer Service at 1-877-267-2448. Otherwise, your acceptance and/or use of the Card will be evidence of your agreement to these terms.

NOTICE: THIS AGREEMENT REQUIRES CERTAIN DISPUTES TO BE RESOLVED BY WAY OF BINDING ARBITRATION, RATHER THAN BY JURY TRIAL. THE TERMS OF THE ARBITRATION CLAUSE APPEAR AT THE END OF THIS AGREEMENT.

In this Agreement, the words "you" and "your" mean the Cardholder, "Bank," "we," "us" and "our" mean Axon Bank, N.A., the issuer of the Card, or anyone to whom we assign our rights. "Card" means the network branded card that is issued to you. Consistent, individuals who believe they have received this card non-consensually will be entitled to full refund of any fees charged to the card. Individuals can claim their identification. To help prevent the funding of terrorism and money laundering activities, federal law requires us to obtain, verify, and record information that identifies each person who registers a Card. When you request or agree to register a Card, you authorize the party giving you the Card to provide us with your name, address, date of birth and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents and may use resources such as credit bureaus or other means to verify your identity information.

Using Your Card. Your Card is active right now and can immediately be used to access available funds that have been "loaded" to the Card. You do not need to call us to activate the Card. If you find that your card is not active, please visit the website on the back of your card to activate it.

You may use your Card to purchase goods and services anywhere MasterCard® debit cards are accepted and to access cash at ATMs of financial institutions displaying the "MasterCard" logo. Each time the Card is used to purchase goods or services or to withdraw cash at ATMs, you authorize us to charge that amount (and any applicable fees) against your Card's available balance. You may not give or transfer your Card to another person for their use.

Warning: Regarding unverified prepaid accounts. It is important to register your personal identification number ("PIN") in order to access cash at ATMs and to purchase goods or services at some point-of-sale ("POS") terminals. Please refer to the activation label on your card for your temporary PIN by calling Customer Service for any unauthorized activity or any errors regarding your account.

TERMINATION. You may use your Card to make a receipt at the time you make any withdrawal with your Card using one of our ATMs.

Balance and Transaction Information. You can obtain information about the current available balance on your Card and a description of recent transactions by calling Customer Service at 1-877-287-2448, visiting the website on the back of your card, downloading our "Cardease" Mobile App or sending a written request to P.O. Box 6425, North Logan, Utah 84341.

Limitations. Subject to your available balance, you may use your Card to make withdrawals at ATMs and purchase goods or services up to the aggregate amount of \$3,500 per day. You may not conduct more than one ATM or twenty purchase transactions on any single day. For security reasons, there may be times when we further limit these amounts. You may not use your Card for any unlawful purpose or to conduct internet gambling transactions.

The maximum amount that can be loaded on the Card is \$9,750. Interest will not be paid to you for any amount loaded on the Card. The Card is non-loadable with additional funds other than by the facility that provided the Card, if applicable. This means that you cannot add amounts to the Card balance after it is issued. There is no credit card, credit line, overdraft protection, or deposit account associated with your Card. Your Cards is not transferable and may only be used by you.

FDIC Insurance. The money credited to your Card will be held in a custodial account at the Bank. Funds in the custodial account are insured by the FDIC to its maximum limits.

Unclaimed Property. We may transfer (resell) your Card balance to the writing customer to the card and you fail to communicate with us credit card, credit line, overdraft protection, or deposit account associated with the Card. Your Cards are not transferable and may only be used by you.

FDIC Insurance. The money credited to your Card will be held in a custodial account at the Bank. Funds in the custodial account are insured by the FDIC to its maximum limits.

Change in Terms. We will attempt to notify you if we decide to cancel or suspend the terms of this Agreement or may be otherwise required by law. We may refuse to process my transaction that we believe may violate the terms of this Agreement or may be unauthorized. You may cancel your Card by calling Customer Service at 1-877-287-2448.

You agree not to use or allow others to use an expired, cancelled, suspended or otherwise invalid Card. Our cancellation or suspension of Card privileges will not otherwise affect your rights and obligations under this Agreement. If we cancel or suspend your Card privileges through no fault of yours, you will be entitled to a refund of the remaining balance without charge.

ATTENTION!

Online Registration: www.axonbank.com/onlineaccountsetup.html. Please visit www.axonbank.com/mobilebanking.html for additional protection and benefits such as Mobile Alerts, 24/7 Transactions Monitoring, Fraud Protection, and Upgrade to a General Purpose Reloadable Bank Card.



estimates costs. You can file a dispute on your card if you believe to the best of your knowledge that a transaction may have been authorized by us.

Card after the expiration date, the transaction may be processed.

Although the Card is yours, the underlying funds do not expire. If there is a balance otherwise, relating to the validity, cancellation, interpretation or enforcement of this agreement, you may request a replacement agreement shall be determined by the laws of the United States and to the extent not inconsistent therewith, the laws of the State of Utah. You consent and submit to the jurisdiction of the state and federal courts located in Cache County, Utah in all disputes referred to the replacement Card or a check for the full balance may be mailed to you at the latest point address reflected in our records. We do not impose a fee for any replacement Card or check sent to you as a result of your Cards expiration.

We may release information about you, your Card and the transactions you perform to third parties where it is necessary or helpful in verifying or completing a transaction to collect the balance, history and condition of your Card to consumer reporting agencies; when you give us your consent; to comply with the law or court order or governmental order; to local, state and federal authorities if we believe a crime may have been committed involving your Card; and as permitted by law. Please see our Privacy Policy at mtdcredit.com/privacy/ for further information.

Although no credit history is required to obtain a Card, you authorize us to obtain information about you from time to time from credit reporting agencies and other third parties to assist us in verifying your identity, to prevent fraud, and to investigate potential misuse of the Card.

Notice of Lost or Stolen Cards/Unauthorized Activity

You agree to notify us at once of any loss or theft or unauthorized disclosure of any PIN or code that might be used to access Card funds. If you believe your Card or PIN has been lost or stolen or that someone has transferred or may transfer money from the Card without reasonable cause, in our attempt to recover funds from, and to assist in the protection of, any unauthorized users of your Card, if you allow another person to use the Card, you agree to be responsible for all transactions conducted by that person, even if the transactions exceed the amounts or use authorized by you.

Our Liability for Failing to Make Transfers. If we do not complete a transaction to be from the Card on time or in the correct amount according to his agreement, we may be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance,

(a) if your Card funds are insufficient for the transaction or are unavailable for withdrawal tech because they are subject to a hold or legal process;

(b) if a computer system, ATM or POS terminal or network is not working properly and you never about the problem when you started the transaction;

(c) if a merchant's problem to honor the Card;

(d) if circumstances beyond our control (such as fire, flood, terrorist attack, or national emergency) prevent the transaction, despite reasonable precautions that we have taken;

(e) if you refuse a transaction because the Card has been reported as lost or stolen, has been suspended by us, or we have reason to believe the transaction is not authorized by you or

(f) as otherwise provided in this Agreement.

In Case of Errors or Questions About Card Transactions (Regulation E). Call us at 1-877-282-2424 or write to Customer Service at P.O. Box 425, North Logan, Utah 84344 as soon as you can if you think your business or transaction information is wrong or if you need more information about a transaction. We must allow you to respond on your card 60 days after the earlier of the date you electronically accept your account, if the error could be viewed in your electronic history or the date we sent first written notice on which the error appeared. You may request a written history of your transactions at any time by calling us at 1-877-282-2424. When notifying us of your name and Card number.

FDIC Description of the error or transaction you are厉害 about, and explain as clearly as you can why you believe it is an error or why you need more information.

Tell us the facts about the suspected error.

In addition, for errors involving your Card, it would be helpful if you provided us with any supporting documentation related to the error.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If you need more time, however, we may decide to do this up to 45 days.

Customer service (live agent)

Card replacement

Customer service (automated)

ATM balance inquiry

Online

PIN change

Customer service (live agent)

Card replacement

Customer service (automated)

ATM balance inquiry

Online

Governance

Law Jurisdiction

Entire Agreement

Your Representations and Warranties

Entire Agreement

GOVERNING LAW/JURISDICTION

<b